

# Implications of AM (Zimbabwe)

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## Pre-Paposhvili - Article 3

- Key Article 3 Caselaw summarised by Lord Wilson at [13] to [19] of Supreme Court Judgment in [AM \(Zimbabwe\) v SSHD \[2020\] UKSC 17](#)
- Desperately high and virtually unattainable threshold.
  - eg See Lady Hale in [N v SSHD \[2005\] 2 AC 296](#) at [69]
- Small shafts of light in [GS \(India\) v SSHD \[2015\] EWCA Civ 40](#) at [70] but not [65] and [66]. (see also [CA v SSHD \[2004\] EWCA Civ 1165](#) at [26])
- Twisted Irony given the ultimate fates of D and N.

## Paposhvili v Belgium [2016] ECHR 1113

- The game changing paragraph 183 of [Paposhvili](#):

“The Court considers that the “other very exceptional cases” within the meaning of the judgment in *N. v. the United Kingdom* (§ 43) which may raise an issue under Article 3 should be understood to refer to situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy.”

## UT and Court of Appeal Respond to Paposhvili

- December 2016 - Palpable excitement and relief for all involved in these horribly difficult cases though sadly not Mr Paposhvili himself. However, wheels of Justice painfully slow. Why no leapfrog appeal?
- Instead, August 2017, [EA \(Article 3 Medical Cases – Paposhvili not applicable\) \[2017\] UKUT 445](#). No surprises
- Then January 2018, Sales LJ’s Judgment in [AM \(Zimbabwe\) v SSHD \[2018\] EWCA Civ 64](#), explained that the excitement was wrong and that Paposhvili relaxed the Article 3 test “only to a very modest extent”. Big surprise and 2 year wait for the appeal to the UKSC...

## AM (Zimbabwe) UKSC

- Congratulations to Charlie, Yaaser, HSF and the AIRE Centre for saving the day! Their impeccable and succinct written Case clearly reflected in Lord Wilson's Judgment. That Judgment records, his now fellow Justice, Lord Sale's interpretation as 'unduly narrow' and in another passage, his words as 'too extreme'!
- In fairness to Lord Sales, his perceived restriction of Paposhivili does ring true with the flood gates concerns of earlier cases (eg Lord Brown at [89] and [90] of N v SSHD). Concerns rather sidelined by both ECHR and UKSC.
- "It may make formidable intellectual demands on decision-makers who conclude that the evidence does not establish "substantial grounds" to have to proceed to consider whether nevertheless it is "capable of demonstrating" them." [32] Surely that is akin to the well known task under para 353?

## Preparing Medical Cases Post AM (Zimbabwe)

- Medical Evidence – clearly critical! Existing Treatment? Consequences of withdrawal of treatment? Likelihood of treatment on return?
- Serious physical or mental illness may meet the threshold (Savran v Denmark [2019] ECHR 651).
- Individual must demonstrate a viable case [32] Once that established...
- Onus on SSHD to (i) “dispel any doubts raised by it”; (ii) “verify on a case-by-case basis”; (iii) consider the accessibility of treatment to the individual by to cost, family network and geographical location; and (iv) that if, following examination of the relevant information, serious doubts continued, the returning state had to obtain an individual assurance from the receiving state that appropriate treatment would be available and accessible to the applicant.

## Discretionary Leave or HP

- This longstanding issue settled by the CJEU in [MP v SSHD \[2018\] C-353/16](#)
- CJEU held not ‘serious harm’ within Article 15(b) unless *‘the individual faces a real risk of being **intentionally** deprived, in that country, of appropriate physical and psychological health care’*. Thus SSHD policy to grant DL upheld in most cases
- Note also [NO \(Afghanistan\)\[2016\] EWCA Civ 876](#)

## Article 8

- [MM \(Zimbabwe\) \[2012\] EWCA Civ 279](#) at [23]
- [Akhalu \(Health Claim: ECHR Article 8\) v SSHD \[2013\] UKUT 00400](#)
- [Immigration Rule 276 ADE](#) and [Parveen v SSHD \[2018\] EWCA Civ 932](#) at [8] and [9]